

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Hypertherm, Inc.

v.

Civil No. 05-cv-373-JD

American Torch Tip Company

PROCEDURAL ORDER

American Torch Tip Company filed a document titled: "ATTC's Notice That Hypertherm's Just-Served Expert Report Contradicts Hypertherm's Arguments in Its Motion to Dismiss Amended Counterclaims or, in the Alternative, for Summary Judgment." Hypertherm then filed a response to the "Notice." Although Hypertherm noted in a footnote that ATTC failed to seek leave of court to file the "Notice," it did not otherwise challenge the procedural basis of the "Notice."

The pleadings allowed in federal court are listed in Federal Rule of Civil Procedure 7(a)(1), which does not include a "notice." Rule 7(a)(2) requires that an application to the court for an order must be made by motion, and the word "motion" must appear in the title, LR 7.1(a)(1). Because the "Notice" filed by ATTC does not include "Motion" in its title, other than to refer to Hypertherm's motion, it is not deemed to be seeking an order from the court.

Instead, the "Notice" appears to be a belated surreply to Hypertherm's reply to ATTC's objection to the Motion to Dismiss.

Hypertherm's reply was filed on January 22, 2007. ATTC filed a notice of its intent to file a surreply and a motion for leave to file a surreply with the surreply. ATTC then moved to strike the motion for leave and the surreply, which the court granted on February 21, 2007. On June 6, 2007, ATTC filed its "Notice" that argues Hypertherm's expert has taken a position contrary to the basis for Hypertherm's motion to dismiss.

A surreply is not allowed without prior leave of court. LR 7.1(e)(3). Because ATTC did not seek leave to file its "Notice," which appears to be a surreply, it was not properly filed. The "Notice" will not be considered in support of ATTC's objection to Hypertherm's motion to dismiss.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

June 28, 2007

cc: Jacob K. Baron, Esquire
Steven M. Bauer, Esquire
Seth M. Cannon, Esquire
Joseph A. Capraro, Jr., Esquire
Myriah M. Gambrell-Glenn, Esquire
Jamie N. Hage, Esquire
Nicholas K. Holmes, Esquire
Jonathan A. Lax, Esquire
Barbara L. Mandell, Esquire
Richard C. Nelson, Esquire
W. Scott O'Connell, Esquire
Jeremy P. Oczek, Esquire
Allan J. Sternstein, Esquire
Adam B. Strauss, Esquire